CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF MEETING, Public Session

March 14, 2006

Call to order: Chairman Liane Randolph called the monthly meeting of the Fair Political Practices Commission (Commission) to order at 9:48 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Randolph, Commissioners Sheridan Downey, Phil Blair, and Gene Huguenin were present. Commissioner Remy was unable to attend.

Item #1. Public Comment.

There was none.

Consent Items #2-8.

Chairman Randolph asked for any comments from the Commission.

There was none.

Commissioner Huguenin moved to approve the following items in unison:

Item #2. Approval of the February 16, 2006, Commission meeting minutes.

Item #3. In the Matter of Pierce O'Donnell, FPPC No. 01/323. (26 counts)

Item #4. In the Matter of Daniel Ricardo Gonzalez and Friends of Daniel R. Gonzalez, FPPC No. 02/375. (3 counts)

Item #5. In the Matter of Eric Barragan, Committee to Re-Elect Eric Barragan, and Oralia Razo, FPPC No. 02/859. (2 counts)

Item #6. Failure to Timely File Late Contribution Reports – Proactive Program.

a. **In the Matter of Fresno County Republican Central Committee, FPPC No. 04-391.** (2 counts)

b. **In the Matter of Steamfitters & Refrigeration U.A. Local 250 P.A.C., FPPC No. 05-253.** (9 counts)

c. **In the Matter of Verboon, Milstein & Peter, FPPC No. 05-576.** (12 counts)

d. **In the Matter of Republican Central Committee of Imperial County, FPPC No. 04/464.** (5 counts)

e. **In the Matter of Richard W. Selby and Affiliate Selby/Simon Partnership and R. W. Selby & Co. Inc, FPPC No. 06/039.** (1 count)

Item #7. Failure to Timely File Major Donor Campaign Statements.

a. **In the Matter of DuRard, McKenna & Borg, FPPC No. 05-736.** (3 counts)

b. **In the Matter of Benjamin P. Novello, FPPC No. 05-868.** (1 count)

c. **In the Matter of Stanley Black and Black Equities, FPPC No. 06-091.** (1 count)

d. **In the Matter of Lawyers Committee for Civil Rights/Equal Justice Society, a project of LCCR, FPPC No. 06-097.** (1 count)

Item #8. In the Matter of Edwin Mui, FPPC No. 05/482. (1 count)

Commissioner Blair seconded the motion. Commissioners Downey, Blair, Huguenin, and Chairman Randolph supported the motion, which carried a 4-0 vote.

ACTION ITEMS

Item #9. Adoption of Proposed Regulatory Amendments to Regulations 18225.4 and 18428 and Adoption of Regulation 18215.1 — Aggregation of Contributions and Independent Expenditures.

Bill Lenkeit, Senior Commission Counsel, presented regulatory proposals regarding Commission policy on aggregating contributions and independent expenditures made from two or more sources that are directed and controlled by the same person and the procedures for reporting those payments. The language presented involves three regulations. First, staff proposes the adoption of regulation 18215.1 codifying Commission policy with respect to aggregation of contributions as originally developed in the Commission's *Lumdson* and *Kahn* opinions. The proposed language is substantially the same as the previous regulation with the same number, which was repealed in the wake of the passage of Proposition 208 as incompatible with that proposition's provisions. However, with the repeal of Proposition 208 and the passage of Proposition 34, the former language of the regulation was incorporated in section 85311, but the statute applies only to contribution limits to state candidates. The proposed new regulation would clarify that the aggregation provisions are applicable for all purposes under the Act. The second regulation addressed is regulation 18225.4, which provides the aggregation rules for independent expenditures. This regulation was first adopted along with the original regulation 18215.1 with identical language and remains unchanged from its original form. The proposed amendments would conform the language of this regulation to the statute and proposed language contained in the new regulation offered for adoption.

Mr. Lenkeit explained that at the January 2006 meeting the Commission reviewed staff's proposed regulatory changes to these regulations and directed staff to make minor changes and to notice these amendments for adoption at this meeting. The third regulation involves the provisions for reporting aggregated contributions and independent expenditures under regulation 18428. As addressed in staff's memorandum, the proposed amendments offer provisions to both clarify and expand the reporting provisions. The unresolved issues from the January meeting are contained in decision points one through three. Decision Point 1 concerns the required identification of the person under the name of filer section of the campaign report and offers two options. Option 1 provides that all entities whose contributions or independent expenditures are aggregated in the report must be listed along with the identified person who directs and controls the payments. Option 2 provides that only the name of the person who directs and controls the payments be listed, but that the filer identify that the report includes the aggregated payments of other entities. Samples of each option are provided in staff's memorandum.

Mr. Lenkeit said that under either option, the name of the contributor is identified separately in the body of the report. However, the first option, with its more comprehensive identification requirement would allow the public to more easily access the information in conducting the search for entities whose campaign payments are aggregated.

Commissioner Downey asked if a full text search is available to the public.

Mr. Lenkeit replied that a full text search requirement is only available in the name of the filer block.

Mr. Lenkeit continued with Decision Point 2, which addresses the identification of entities on recipient committee campaign reports when the payments received are aggregated with other entities. Under current law, the recipient committee need only identify the entity making the payment and that the entity is affiliated with another entity that made aggregated contributions or independent expenditures, but it does not require that the name of the other entity be identified. Option 1 would require the recipient committee to identify both the contributor from whom it receives that payment and the name of the person who directed and controlled the payment when the payment is aggregated with those of another individual or entity that files a major donor or independent expenditure committee report. Under Option 2 the current requirement would remain in effect and only the entity making the payment would need to be specifically named. Finally, Decision Point 3 would extend to recipient committees the aggregation reporting requirements currently applicable to major donor and independent expenditure committees. Under this amendment a recipient committee would be required to indicate any contributions it makes that are aggregated with contributions from other entities directed and controlled by the same person or a majority of the same persons and additionally notify the donee that the contribution is aggregated with another individual or entity.

Mr. Lenkeit referred to a comment letter that was received from Chip Nielson, of Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, in which several comments were made regarding reporting regulation 18428. The first comment set some examples of when contributions would be aggregated and four examples were given of different entities. Entity one is controlled by X, Y, and Z. Entity two is controlled by X, Y, and T. Entity three, X, K, and L.

Entity four X, Y, M, N and O. Mr. Nielsen's conclusions are all correct as long as they are controlled in equal shares, X and Y would be a majority of the same individuals controlling entities one and two, and therefore, the contributions of entities one and two are aggregated, but in none of the other situations would we have aggregated contributions because they are not controlled by the same individual or a majority of the same individuals.

Commissioner Downey confirmed that entities one and three would not be aggregated and that X is not a controlling individual in each of those entities.

Mr. Lenkeit agreed, adding that X does not control a majority of the shares of the corporation so X would only be one of three individuals in the first three entities. There are other individual that also control shares.

Commissioner Downey verified that a majority of the controlling individuals is needed.

Mr. Lenkeit concurred and gave the example of X and Y which are a majority, except in entity four, where they are both included but are not a majority.

Mr. Lenkeit continued with Mr. Nielsen's next comment from the letter referring to page one on regulation 18428, lines 11 through 16. There are concerns with the language being unclear. The question raised is whether each one of the individuals would have to make a threshold contribution. In other words, if X made $8,000 and Y made $8,000, would they have to report as a major donor? To clear up the language, Mr. Nielsen suggested several changes. Mr. Lenkeit explained that, after discussion of these suggested changes, it was agreed that simply crossing out language on line 11 would fix the problem. The line reads "any person that is a committee" and the suggestion is to cross out "person that is a" and leave it to read "any committee."

Chairman Randolph supported the suggestion, saying that the word "person" requires analysis of whether the person even qualifies as a committee. Just eliminate that and make it clear that the regulation applies to entities that qualify as committees already.

Commissioner Downey confirmed that the letter from Mr. Nielson included the word person but during the discussion over the phone, it was agreed that it should be "any committee."

Mr. Lenkeit said that during the discussion, Mr. Nielsen explained the problem with the language implying that X may not be a person and the suggestion was made to cross the section with "person" out and Mr. Nielsen agreed.

Chairman Randolph asked for the next suggestion of Mr. Nielsen's.

Mr. Lenkeit said that the next point deals with lines 16 through 19 on the page 1. In this case Mr. Nielsen wanted to know who the name of the filer would be in the example with X and Y being the controlling individuals, X or Y. When the language was originally directed at the situation where one corporation would control another corporation. Since X and Y controlled one corporation, then the other corporation would be under X and Y. Mr. Nielsen asked what would happen if X and Y were just two individuals and they happened to own controlling shares

in two corporations that do not have anything thing to do with each other. Entity one would not be controlling entity two because they would be individuals. Therefore, there was a question of which would be the name of the filer, X or Y. Staff does not believe there is any difference, it could be X or Y.

Chairman Randolph asked whether Mr. Nielsen's language was clearer as to which name would be the filer or does staff's language make it clearer.

Mr. Lenkeit said that Mr. Nielsen's language sets out more clearly that there is an option to make the name either X or Y.

Commissioner Downey added that for treasurers who will be preparing these reports, Mr. Nielsen's language would be more helpful.

Mr. Lenkeit agreed and said that staff has no objection to using Mr. Nielsen's language.

Commissioner Downey asked if staff is satisfied with not having both names in the filer box.

Mr. Lenkeit replied that there is no objection as long as there is something that links to the name of the filer so that it is clear which entity is controlled by how the contributions are aggregated.

Chairman Randolph moved on to Mr. Nielsen's comments on Decision Point 1.

Mr. Lenkeit explained that Mr. Nielsen prefers Option 2. The purpose of Option 1 was because it was the only searchable field on the form so it would be easier for the public to find a contribution from one of the aggregated entities by linking it up to the name of the filer in the block. Mr. Nielsen wondered why a separate form could not be required to link everything up.

Chairman Randolph asked how a separate form would work.

Mr. Lenkeit responded that the way a separate form would work was unclear to staff as well and speculated that there would have to be something referenced under the name of filer section that would indicate "see aggregated contributions."

Commissioner Downey said that it seemed like a new form would need to be created, and there would have to be a new box in the name of the filer box saying that there was such a form.

Chairman Randolph asked if contributions made by a corporation that was not listed as the filer of an entity would be found in a search in Cal Access.

Carla Wardlow, Chief of Technical Assistance, responded that only the contributions filed specifically by that entity would be found in a search.

Chairman Randolph confirmed that no contributions would be shown that were aggregated with another entity that was listed as the filer.

Mr. Lenkeit added that unless the entity files its own report the aggregated contributions will not show up.

Chairman Randolph confirmed that the contribution made would show up but the fact that it is aggregated would not.

Mr. Lenkeit said that the contribution will not even appear unless that entity's name is in the filer box.

Commissioner Huguenin added that creative filers may switch the name of filer each year so that one entity files with the aggregate one year and the other entity files the next. The regulation allows for either of them to do so.

David Hulse, of the Political Reform Division in the Secretary of State's Office, addressed the Commission regarding the constraint in the present search engine and in using Cal Access in general when talking about a Form 461 filer. The best bet is to embed as much as possible in terms of the name field of the filer because a discreet portion of that name can be search upon using a search engine within Cal Access to look for a specific identity. A unique identifier is assigned to each major donor filing and the field was 120 bytes before the year 2000; that was a constraint of the old tracking system. When Cal Access was created the Commission and the Franchise Tax Board were consulted to discuss the limitations of what was being created. The constraint of the name field now is 190 bytes. The search in terms of at least identifying the major donor itself is going to be embedded in the name field. If an attachment was added, a new form, that could list all those that are aggregated within the scheme of things, given the present search engine, that would not be captured. The filing format for the Form 461 would have to be changed and that could be done, and an attached schedule could be brought in. However, it would not affect the search. The best bet in terms of searching for the major donor would be in the name field itself. If the searcher had the main contributors and then a series of subsidiary names, that could be searched on and it be done on in the front of Cal Access, which is a general search engine that just asks for name or identification. If the name is requested and something is embedded, it will show up.

Commissioner Downey expressed confusion as to why Mr. Nielsen prefers Option 2, which is not to put the aggregated entities in the name field and wondered whether, when the Form 461 is completed, if the filer has to put in the name of the entity with whom the filer is aggregating.

Mr. Lenkeit answered that currently the filer does not have to put in the names of the entities with whom it is aggregated.

Ms. Wardlow added that when the Form 461 is filled out, each contribution listed or independent expenditure made has to include which entity made that particular payment. The way the form is set up right now there is not a lot of room, especially for electronic filing, to put that on the form. Many filers use what is called the memo field, which is not searchable at all. It is located in the electronic version of the Form 461. That is the only way to discover which of the affiliated entities actually made that contribution or that payment.

Commissioner Downey supposed that would be another reason that the Commission would prefer to have all the aggregated entities listed in the name field. As protection to the public in being able to find out who made the contributions.

Chairman Randolph suggested that the Commission hear from public comment on the issue of this Decision Point and then go through the rest of the letter.

Jennie Eddy, of Nielsen Merksamer, responded to Commissioner Downey's question of why Mr. Nielson prefers option two. The reason to use option two is that Mr. Nielsen has many clients whose affiliated entities may number more than twenty or thirty additional entities and those would not all fit in the restricted field. Possibly one or two, or even three entities would fit on the list but not all of them. There may be a situation where a large corporation would have several entities, but only three made contributions during a certain reporting period and to try and list them all on the form, when only three are relevant to that report, is unnecessary. Regardless, there is not room to enter all the affiliated entities, even if it were required.

Commissioner Downey said that the problem seems to be one of not having enough room to include all of the affiliated entities in the filer block.

Mr. Hulse responded that currently the restriction on the number of bytes is hardwired into the system. That does not mean that the system cannot be adapted or expanded. If the situation is that 190 bytes is not going to accommodate the average filer, or even one filer, there will be a period of time where that filer will be frustrated by the system because it cannot be changed over night. This will not be a simple change. It will require changing the Cal filing format, then retesting every vendor, then changing the Cal online system and the Cal Access display. It would be quite a hardship on the Secretary of State and there is no budget to accommodate this change. In the coming years, as the system moves forward into more streamlined electronic filing, there will be an opportunity to find a way to reduce the data to its most simple mean and the name field can be readdressed. For now, it is the memo field that will accommodate that additional data beyond the 190 bytes, and that field is not searchable.

Commissioner Blair wondered how many letters equals 190 bytes.

Mr. Hulse answered that 190 bytes is 190 letters but added that a byte is also a space so essentially it is 190 spaces because the spaces, as well as commas, between the names count as well. It is not a compressed name of just the actual letters, unfortunately.

Commissioner Huguenin asked if there would be any use in looking at a different means of tracking these aggregated entities, such as Mr. Nielsen's suggestion of reporting them on a separate schedule. Obviously, there will not be any means of doing this today, but would it be useful to consider something like this for the future. It is understood that the searching needs to be limited to as few fields as possible because the architecture is less complex, but would it be helpful for a separate schedule

Mr. Hulse replied that a separate schedule would most likely accomplish the task of reporting all the aggregated entities. All of the alterations that were previously mentioned would not be

needed, however the Cal Access filing format would have to be changed to accommodate that additional schedule, retest the vendors, change Cal Access online, and change the Cal Access PDF display to show the schedule. Then some sense of a search would have to be crafted that could go into the field because it is an unexplored field right now. That too, would take time and some resources.

Commissioner Huguenin responded that the idea right now is simply to get a sense of the way in which this issue can evolve at this point. Right now, there are two ways and maybe more. The task is to figure out, in terms of ten years down the road, which route will be the best to take.

Mr. Hulse commented that it will be nice if there is no Form 461 by that time. As project manager when Cal Access was created, the attempt was to emulate the paper form of the Form 461. It is a form that has a lot of free-hand writing and open fields, and it was difficult. Ten years down the road it might be best to look at a completely different way of reporting.

Chairman Randolph commented, getting back to the question of which option to choose, this may be an issue of trying to fix a problem that really does not exist. It would be nice to be able to search aggregated contributions, however, if that means having to go through a lengthy name of filer modification, maybe the process should remain as is for now. The Commission can note the needed change in the name of filer block as an improvement that will need to be completed over the next few years.

Mr. Lenkeit clarified the comment made by Ms. Eddy regarding the entities that would be included on the report even though they may not have made contributions for that reporting period, explaining that only the entities that contributed need to be listed on the form. Those who did not make contributions need not be listed.

Kathy Donovan, of Pillsbury, Winthrop, Shaw, Pittman, LLP, seconded the comments of Mr. Nielson's regarding keeping the name field small for now, rather than trying to make it searchable with every entity. The memo field will include the entire list of affiliated entities and a public note identifies which entities made contributions.

Commissioner Downey asked why it is necessary to include the names of all the entities.

Ms. Donovan replied that it is necessary because the names change from report to report.

Chairman Randolph asked for any other comments.

There were none.

Mr. Lenkeit continued with Mr. Nielsen's comments. The next one dealt with lines 3 through 6 on page 2, suggesting some minor clean up language that staff does not object to. The next comment concerned lines 6 through 10, and it was recommended that Form 461 filers not be required to add and delete names of affiliated entities. That is the law as it stands now and no changes were made. The only way to consider that suggestion would be to start over completely.

Chairman Randolph affirmed that staff's opinion on that comment is that it is already existing law.

Mr. Lenkeit agreed that it is existing law that was not changed. The next comment of Mr. Nielsen's dealt with lines 10 through 15, and the suggestion was to add something to the instructions because people are not going to read the regulation. Staff believes that it would be clarified in the instructions. The last page of Mr. Nielsen's letter refers to page 2, line 16. Regarding Decision Point 1, option 1, it is recommended that if the Commission chooses to adopt option 1, language be added saying "(but not including the names of the other entities directed and controlled by the filer whose contributions or independent expenditures are included in the report)." Mr. Nielsen is referring to when a major donor files a report with aggregated entities that contribution has to be reported by the recipient committee that it is an aggregated contribution. Mr. Nielsen would like to make sure that when the name of filer reports to the recipient committee, that person does not have to list all the other entities that are directed and controlled by that person. The name of the company making the contribution and the name of the filer who is the controlling entity of that company is all that would be required. Staff does not think that this needs to be clarified, but there does not appear to be any harm in doing so.

Chairman Randolph added that this would only be if the Commission chose option 1.

Mr. Lenkeit stated that staff was agreeable to Mr. Nielsen's comment on Decision Point 2.

Chairman Randolph asked for any other comments on the proposed regulation.

There was none.

Chairman Randolph said regarding the first two regulations, 18215.1 and 18225.4, that the Commission had spent a fair amount of time discussing them the previous time this item was presented and asked if there were any new comments.

There were none.

Chairman Randolph moved on to regulation 18428. As mentioned previously, there seem to be enough challenges that come up with choosing Option 1 that choosing Option 2 appears to make the most sense until the Commission is at a point with the electronic filing system where changes can be made more readily.

Ms. Wardlow interjected that another alternative for Option 1 and Option 2 might be to have each aggregated entity file its own separate report and there would be something added to the cover page of the form that would require the filers to indicate who their controlling entity is. That way, each filer would identify their own contributions and expenditures on their own report, but the controlling entity would be identified, which may solve the problem of not having enough room for all of the names. At the same time, it would allow the search capability for any name of any donor who is following the aggregation rules.

Chairman Randolph confirmed that what that would mean is that a corporation with four affiliated entities that are making contributions, they would file five reports instead of one report.

Ms. Wardlow agreed, adding that each aggregated entity would report the name of their corporation as an aggregated entity and include the name of the parent or directing person.

Chairman Randolph expressed little interest in that option and asked if there were any commissioners who wanted to pursue it further.

Commissioner Downey agreed with the Chairman, stating that it would be nice to be able to search for everything but there are serious practical problems with the Secretary of State's Office. There is also a significant inconvenience among the filers who have a number of aggregated entities. It does not seem to be such a big problem that is must be fixed immediately.

Chairman Randolph addressed Decision Point 2, expressing that Option 1 is sufficient and Mr. Nielsen's suggested changes are appropriate. Decision Point 3 seems straight forward as well. Therefore, the changes include line 11, deleting the words "person that is a" so it would say "any committee." Then the existing language at line 16 would be deleted and substitute "the campaign statement shall be filed in the name of an individual or one of the contributing entities that directs and controls the making of the payment of the entity or entities whose contributions or independent expenditures are required to be aggregated." Next, there appears to be a consensus toward choosing Option 1. The next change is on page 2, lines 3 through 6, where the language would be changed to read "In itemizing the amount of each contribution or independent expenditure made, the campaign statements must also identify the name of the entity making the contributions or independent expenditures."

Mr. Lenkeit clarified that the consensus is toward choosing Option 2, not Option 1.

Chairman Randolph agreed that the consensus is toward choosing Option 2. Regarding page 2, lines 16 through 19, since Option 1 was not chosen, that change does not need to be addressed. Page 3, lines 5 through 6, the language would be changed to say "and additionally include the "name of filer" of the Major Donor committee that will report this contribution as provided under subdivision (b)(2) above.

Commissioner Downey wondered if it would be helpful for the Commission to adjourn this matter momentarily and have staff make the agreed upon changes to the language and then have the Commission review it once more for adoption.

Mr. Lenkeit agreed to make the changes and return for review.

Chairman Randolph stated that this item will be set aside.

Item #10. *In re Pirayou* Opinion Request O-06-016.

Commissioner Downey asked what precedential value advice letters have.

Luisa Menchaca, General Counsel, replied that advice letters do not have precedential value.

Andy Rockas, Legal Counsel, presented a summary of the legal background relevant to a request for opinion made by former Assemblymember Ellen Corbett and her campaign committees through their counsel, Mr. Ash Pirayou. The request involves the application of section 89519 of the Act. That section deals with defining how "surplus campaign funds," a term of art under the Act, may be used. Specifically the request asks whether Ms. Corbett and her committees may, with attribution, transfer surplus campaign funds remaining in her old assembly committee account to her new senate Committee Account. Though such a transfer is not allowed under the specific language of section 89519, the requester asks that such a transfer be allowed based upon a mistaken application of the Act by Ms. Corbett's treasurer. Specifically, former Assemblymember Corbett's last term as a member of the State Assembly ended in November 2004. She is now running for State Senate in 2006 and has an Assembly Committee Account containing approximately $80,000 in campaign funds. Because these funds were not transferred to her current Senate Committee Account before the end of her last term in the Assembly, they became surplus campaign funds pursuant to section 89519. The explicit language of section 89519 indicates that once funds are deemed surplus, they may not be used to support or oppose specific candidates for state elective office in California. On June 17, 2005, Ms. Corbett sought written advice requesting relief for the consequences of the "gross negligence" of her committee's treasurer. On July 8, 2005, the Legal Division issued an advice letter opining that transfer was not permissible under the provisions of the surplus funds statute. That advice letter, issued by staff, is attached as Exhibit A to the Legal Division's analysis of these issues, which was distributed before this meeting. On January 27, 2006, six months later, after the advice letter was issued, Ms. Corbett and her committees engaged Mr. Pirayou to submit a request for an opinion pursuant to regulation 18320 regarding the same essential issues submitted to the Commission in June 2005. Staff believes that if the requested relief were granted the Commission might invite a line of elected officials seeking similar relief from all types of mandates in the Act based upon the purported negligence of their treasurers. Staff recommends that the Commission not issue an opinion or, in the alternative, issue an opinion that substantially restates the analysis of the July 2005 advice letter.

Ash Pirayou, of Pirayou Law Offices, addressed the Commission and thanked staff for the patience and professionalism that has been displayed throughout the last few months of this process. The facts in this case are undisputed and were presented to the Commission via signed affidavit, signed under penalty of perjury by Ms. Corbett and her treasurer. As mentioned by staff, Ms. Corbett's term finished in November of 2004. Prior to the completion of the term, Ms. Corbett repeatedly asked her professional treasurer, who had been hired because of her expertise in the FPPC rules and regulations the treasurer possessed, to transfer the funds remaining in the Assembly Committee to the Senate Committee. Unfortunately, the treasurer mistakenly thought that the deadline to transfer funds was nine months after Ms. Corbett left office. The treasurer repeatedly reassured Ms. Corbett that there was more time and that the transfer did not need to occur prior to Ms. Corbett leaving office. The treasurer was wrong and as a result, there are funds remaining in the Assembly Committee that were always intended to be transferred to the Senate Committee and have now been deemed "surplus funds." Ms. Corbett's intention all along for these funds was to use them for voter education contact in her Senate race. Ms. Corbett made

every effort to get the treasurer to transfer the funds and this request being made of the Commission to allow this transfer now is not because of inaction by Ms. Corbett, but because of the gross admitted negligence of the treasurer.

Mr. Pirayou reviewed the applicable cases. The most pertinent case is the Miller Advice Letter issued by the Commission. That case in particular dealt with the surplus fund provisions that were applicable in this case. To summarize quickly, the net result of that case was that a candidate who had lost an Assembly race was able to undo a reporting error to, in effect, be able to reimburse herself $900.00 from some funds that were derived from a refund. This was strictly against the provisions of the surplus funds provisions. In other words, staff's letter points out that while the refund could have been redeposited in the Assembly Committee to pay for charitable donations, that candidate had also asked to use that money to repay $900.00 used for candidate statements. The test that the Commission followed in the Miller case is a two pronged test. The Commission followed a test that said, "so long as there is good faith reliance of an error of law that results in a hardship, coupled with the Act's purpose being furthered, in that particular case the particular statute that is at issue here could be ignored with a strict interpretation and the relief granted to the candidate."

Commissioner Downey expressed interest in the Miller Advice Letter and clarified that Miller had paid a portion of the filing fee from personal funds and subsequently, had filed a report showing that the monies had been a contribution to Miller's committee.

Mr. Pirayou responded that Miller had lost the November 2002 election; a refund came to her from an overpayment of the ballot statement for approximately $2000.00.

Commissioner Downey confirmed that the money had come from Miller's personal funds.

Mr. Pirayou replied that Commissioner Downey is correct and explained that Miller had reported that money as a contribution.

Commissioner Downey continued to confirm that after Miller filed the report, the election was lost and the time expired to use those funds for purposes other than surplus funds and the question arises whether Miller can reimburse herself from what appear to be surplus funds. The mechanism used to give the relief was not to allow the surplus funds to be used for any other purpose than those designated in the regulation and statute, but to allow Miller to amend a document filed sometime before the problem arose, showing that the funds Miller had put in the Committee account were a contribution, and convert those funds to a loan. That would reduce the amount of surplus funds and entitle the repayment or the loan.

Mr. Pirayou replied that the staff opinion clearly states that taking the rebate and putting it into the campaign committee to make the refund back because of some provisions relating to the Elections Code and its characterization of those funds used for declaration of candidacy, that is not deemed a contribution such that, per the surplus provisions, the contribution can be returned. What staff says is "although a charitable donation is permitted use of surplus funds, whether you may receive back the funds you deposit in your campaign account to pay your filing fee is problematic. Because you are unaware of the exception and the definition of contribution for the

payment of the filing fee you characterize your $900 payment as a contribution on your form. As previously stated under the definition of contribution, it does not include the candidate's money used to pay the filing fee." In other words, when the funds came back Miller could not rely on the particular provision of the surplus funds that says contributions can be returned. What staff is pointing out is that it cannot be called a contribution.

Commissioner Downey asked, if the money was not a contribution, then what would it be.

Ms. Menchaca said that, as indicated in the letter, it would be reported as a miscellaneous increase to cash.

Mr. Pirayou added that the money would be reported like any other refund, which is how it was characterized. Then it was allowed to be repaid. As staff said, "If this was not a contribution to your committee, then section 89519 (b)(2), permitting the repayment of contributions, may not be invoked to allow you to receive back that funds." Therefore, at that point, the relief is not available. Staff continues, "However, under the unique facts of this situation, your description of the payment to the campaign committee was due to an error of law. The Commission in extraordinary circumstances where hardship would otherwise result and the purposes of the Act would not be furthered by a strict application, has allowed committees to remedy an error that was made due to a good faith misreading of the law. "Basically, staff is taking the surplus fund provision, a conclusion that is absolute, and saying that given these two factors, the Commission is entitled to provide the relief. What we are here asking for is exactly the same treatment. These funds are clearly surplus, however, per Miller, the Commission has the authority to look at the facts in this case and rule in issuing an opinion, limited to this case, that allows Ms. Corbett to undo this error and transfer the funds, not to benefit herself, but to benefit her campaign and to reach the voters of Senate District 10. It is clear that Ms. Corbett herself, had no negligence in this matter. The heart of the argument for this relief is that the Commission has the authority and has used it in five cases where clearly a strict interpretation of the law would not allow something, but based upon principles of fairness and equity, the Commission has allowed the relief in order to avoid a hardship.

Chairman Randolph asked that Mr. Pirayou address the second prong of the test as articulated from Miller, which is that the strict application of the law would not further the purposes of the Act, and address how it applies to Ms. Corbett's situation.

Mr. Pirayou explained that the Act's purpose is not so narrow as to only deal with the reporting of contributions. Upon taking a look at the comprehensive system set up by the Act, it is to create an environment of financing elections. Therefore, what Ms. Corbett is asserting is that the purpose of the Act is furthered by allowing this remedy because Ms. Corbett is not going to use these funds for any other purpose, but for voter contact. The irony of a scenario where the relief would not be granted is, had Ms. Corbett reported the $90,000 as a loan, then per the Commission, she would be able to go back, correct the mistake and pay herself back the $90,000. The argument is that the purpose of the Act is furthered by allowing this remedy because the funds are being used for the purposes of the Act.

Chairman Randolph replied that this is a very difficult situation.

Mr. Pirayou addressed staff's concern that a "parade of horribles" would result if the relief were granted and that thousands of people would now ask for this same remedy.

Chairman Randolph said that the concern of other people wanting the same consideration is not necessarily a worry because it is always possible to craft an opinion that specifies a certain scope. The bigger problem is that there is very little latitude in the actual language in section 89591.

Mr. Pirayou agreed that section 89591 is an absolute, however, the suggestion being made is that the hardship and facts being presented, combined with the unique cases in the past gives the Commission the authority to grant the relief, even in the face of a strict interpretation of the Act. The heart of the argument is based on equity and fairness. The letters to the Commission were an attempt to point out the different circumstances that would show that the Act's rules and regulations have this concept of detrimental reliance, of good faith. The only harm that would result here is Ms. Corbett not being able to reach voters. Respectfully, if the Commission remedied this opinion it would correct a situation that is no fault of Ms. Corbett's.

Commissioner Huguenin asked if there is any cause of action against the treasurer for this negligence and even if Ms. Corbett was successful in collecting $80,000 after the attorney's fees, would there be a way that the money could be put into the Assembly Account.

Mr. Pirayou replied that presumably there is a cause of action, however, the intention was to not litigate against the treasurer. A signed release was executed in order for the treasurer to feel comfortable admitting to the negligence. It is the most unfortunate of situations for both the treasurer and the candidate. If a judgment was collected, assuming there were funds left over, the funds would somehow be deemed a miscellaneous increase to cash similar to Miller and allow the transfer to happen at some point.

Chairman Randolph added that presumably, by that time, the election that the candidate was intending to use the money for would be over.

Commissioner Huguenin explained that the idea behind his question was to decipher if there was possibly another road to take in this situation, however, there does not appear to be one.

Mr. Pirayou replied that the Commissioner is correct. Staff pointed out the Civil Code of Procedure, however, by the time the trial court actions are filed or the return of the donations has occurred, the funds are exhausted. A considerable amount of time was spent researching every single case that would be applicable, reading the Act provisions, and looking at other case law before the extraordinary step was taken to ask the Commission for this extraordinary relief in these unique circumstances.

Commissioner Blair noted that this is the first request of its kind that the Commission has heard in the time that all of the Commissioners have been a part of the Commission and asked if that is why the Commission is here, to hear cases of errors that treasurers have made or any error made that may penalize the candidate in the current or future office.

Chairman Randolph replied that this is the only known time that an issue of a treasurer's error has gotten all the way to the Commission. There are the five advice letters that have varying errors by varying people, however, they have all been dealt with at the advice letter stage. The Chairman asked if there were any other opinion requests received regarding the issue of error.

Ms. Menchaca replied that in the opinion context, there have not been requests of that same nature.

Commissioner Blair stated that a precedent may be set if the Commission decided that the candidate was not in error, just the treasurer was, and the decision was overruled and the transfer was allowed, candidates from this day forward will come to the Commission to have penalties overturned because the error was not the candidate's fault. The bigger question is whether the Commission wants to start a precedent in which it will hear two or three of these at every meeting; unless this situation is so different from any treasurer's error that causes a penalty or does not maximize the use of funds in future campaigns.

John Appelbaum, Chief of Enforcement, replied that the Commission is, in fact, treading on a very difficult area because there is one issue of fairness and one issue of fault. Those are the two concepts here. The area of fault is extremely sensitive because under regulation 91006, there is joint liability. A good fifty percent or more of the enforcement cases involve a committee where the treasurer may not have done something they should have or done something they should not have. In that circumstance, Enforcement is going to hold the committee or the candidate, if it is candidate controlled, liable for the violation. If there is a situation where the candidate can not be blamed because of a rogue treasurer problem, then distinguishing fairness from fault is vital.

Chairman Randolph commented that this particular situation is not an Enforcement case, this is an issue involving going forward conduct, not an issue of penalty.

Mr. Appelbaum explained that where the Commission is treading sensitively is to the extent that it is decided that a candidate should not be liable for the treasurer's mistake.

Commissioner Huguenin said that had someone written the check for $80,000 to the other committee after the nine months then this would be an Enforcement situation. However, in that case, someone would have committed an act which violated the rules, rather than coming forward in a posture of someone who is trying to play by the rules and who has an explanation for the error, and is basically asking the Commission to hear equity matters. From time to time, a little equity may be a good thing and that is one of the reasons this is being heard.

Mr. Appelbaum agreed with the Commissioner and added that there is a fine line between fairness and equity, however when fault is discussed and whether a candidate should be liable is a different issue.

Commissioner Huguenin responded that one point is that the clean hands of the party coming before equity tribunal are important.

Commissioner Blair expressed support for the concept of a last appeal for an error, however, something that needs to be added decides where it ends.

Mr. Pirayou sought to address what seemed to be three main concerns of the Commission. The first being the role of the Commission and towards the end of the supplemental letter, it is pointed out that clearly the Commission has a quasi judicial role. That is said because through staff, the Commission has issued previous advice letters that has allowed this concept of equity and fairness. The Commission has the authority, although it may never have been seen at the Commission level.

Commissioner Blair explained that the question is not whether the Commission has the authority and the Commission should certainly be the last barrier. However, there is a bigger picture than just this case in that if it is ruled that a treasurer or a staff person made a mistake and gave the wrong advice, can it be appealed to the Commission to change the ruling.

Mr. Pirayou responded that there may not have been many of these cases because typically the error is in favor of the candidate. This is actually an error that is detrimental to the candidate and the best evidence to that is that this is approximately the sixth time the Commission has dealt with this in its history.

Chairman Randolph asked for any comments from staff.

Mr. Rockas responded first to Mr. Pirayou stating that most of the errors that have occurred in the past were in favor of the candidate. However, the advice letters sited all involve errors that were detrimental to the candidate, and all in a personal way based upon a mischaracterization of some type of reporting requirement. None of those letters, moreover, include any mistake that involves the application of section 89519, except for one mention in the Miller letter. Understanding that the requester is sufficiently motivated to present the reasons why the Miller advice letter is analogous to his client's predicament, for the sake of expediency, I will present just the reasons for why it should be distinguished. As described in that advice letter, Miller is different from the requestor's scenario in several ways, but the key difference is that Gladys Miller did not run afoul of the surplus campaign funds statute due to her negligence, but rather, because of Los Angeles County's negligence. Los Angeles County made an overcharge error and then failed to timely inform her of it. By the time the county did inform her of the error, her campaign account had already, or was very soon to be, deemed a surplus fund account by operation of law. The key is that but for the county's 137% overcharge, Gladys Miller presumably would not have had to deposit $900 of personal funds to cover the correct filing fee. There are other distinguishing factors as well but that is the key one. The mention simply of section 89519 in the Miller advice letter is not necessarily material to that analysis.

Chairman Randolph replied that the Commission still had to go back and fix what Miller had done in an earlier report. There are overcharge issues all the time. Normally when people get a refund, it is normal to let the committees re-open to deposit the refund. It would not have been an advice letter if it were not for the fact that Miller had made a mistake originally.

Mr. Rockas replied that in the absence of any kind of mistake by Los Angeles County, Miller's "mistake" of mischaracterization of the payment to the campaign fund, which ended up not being a contribution, would not have had any affect. Her mistake was innocuous; it was Los Angeles County's fault that really was the material problem. Moreover, as Commissioner Downey pointed out, is this a case of letting someone get a pass on the strict application of the wording of 89519, or is this really just allowing someone to re-characterize a reporting error?

Ms. Menchaca added that in the Miller letter, the error of law was in reporting the funds as a contribution. If the candidate is aware of the surplus funds statute, which is assumed, then under that error of law the repayment of the contribution was permissible under the surplus funds campaign statute. Therefore, if Miller really thought the money was a contribution and knew of the surplus funds statutes, there would have been no consequence to wait because it is permitted under 89519. In this situation, what the requestor is asking the Commission to do is permit something that is prohibited under the surplus funds statutes. I think that is a fundamental difference. Ultimately, in the Miller letter a conclusion was reached which would allow that repayment to occur which, under Miller's initial assumptions of the law, would have been permitted. Here under no circumstances, these kinds of transfers, once they become surplus are permitted and they have not been for many years. That is an important legal distinction.

Commissioner Huguenin asked if the money were refunded to the contributors, if they could be identified, that make up this $80,000 balance that is now surplus, whether those contributors could then re-donate the money to the candidate's current activities?

Ms. Menchaca replied that re-donating the money to the candidate would be permitted with attribution.

Commissioner Huguenin said that returning the donations and then having them re-donated would be another alternative to this case. The Commissioner though that there was a lot of burden associated with that.

Chairman Randolph asked for any additional comments from Mr. Pirayou.

Mr. Pirayou responded that the Miller letter is very clear and the main point is that there is an error that caused hardship, and based on the previous precedents the Commission has the authority to grant that relief. Former Assemblymember Corbett had been in the California Assembly and in elected office for a period of 14 years. During that time Ms. Corbett has had an absolutely stellar record with the Commission rules. This is an unfortunate situation.

Commissioner Downey said that this situation initially appears unfair for Ms. Corbett. The only thing done wrong as far as the Commission is concerned, is that Ms. Corbett chose a treasurer who made a mistake. That was unfortunate and the Commission would like to see Ms. Corbett be able to use the funds that, at one period of time, could have been used for the new campaign. Ms. Corbett did all she could, other than choose a different treasurer, to avoid this problem. However, the problem with the Commission giving the relief is based on the statute and the regulation. The statute is clear on its face in defining surplus funds and what can be done with them, and Ms. Corbett does not fit in there. If the regulation is considered, there does not seem

to be a way to work around regulation18951(a)(1) which says in the final sentence "an incumbent candidate who wishes to use funds for a future election must transfer those funds to a new committee for a future election no later than [a specific date.]" The sentence does not say "unless it is not fair." There needs to be some sort of leeway in the statutes or the regulations to give you the relief that is sought. The Miller case, although the best help to the requestor's argument, is not precedential and the facts were different. The letter does not cover the problems with the statute and the regulations, which are very clear. The purposes of the Act have to be embedded in these statutes and regulations, whether we like the purpose or not, and the purpose here is to establish and determine usage of surplus funds, there is no way around it.

Mr. Pirayou replied that, regarding the other advice letters presented, there are verbatim examples of where the relief that was provided was contrary to some explicit statute or regulation.

Commissioner Blair asked regarding the other five advice letters, if the Commission overruled them all.

Mr. Pirayou replied that the Commission granted relief in the advice letters in each and every one over strict language that did not provide that relief.

Commissioner Downey asked over what time frame where these advice letters drafted.

Mr. Pirayou replied that the most recent cases were in 2004.

Chairman Randolph said that she saw Commissioner Downey's point, however, Mr. Pirayou's point is correct as well. The Commission has, at the staff level, and not the Commission level, allowed relief despite the strict language of the statute in the past. The Commission does have the ability to look only at the specific facts of this particular case and decide that it is not unreasonable to say that allowing the relief sought does not conflict with the purposes of the Act. It may be worth trying to craft an opinion to allow the relief.

Commissioner Blair offered to make a motion to allow the relief.

Chairman Randolph suggested further discussion to determine what the scope of that motion would be.

Commissioner Huguenin stated that if there is going to be equity there will need to be some standards, including clean hands and a few other things, all of which somewhat seem to be present in this case. It seems that the Commission ought to allow this. However, this is a legislative body and this Commission does not just interpret the statute, but also promulgate regulations which seem very clear. It would be worth trying to put something together to allow this relief. It is not certain if the Commission can get there, however, the effort should be made.

Chairman Randolph explained that there are plenty of situations where people ignore that plain language and purposes of the Act, and in this situation there is someone who is bringing this to the Commission's attention deliberately, without violation, and asking to use this money. The

Commission did not think it was inconsistent with the basic statutory scheme to allow Ms. Corbett to do so.

Commissioner Downey warned, pointing to the example of a past candidate for statewide elective office, that any candidate may use the same defense to say that someone from the staff of the campaign misinformed the candidate and the relief from that fault should be granted as well.

Commissioner Huguenin pointed to a distinction where one case has an act that violates the law and in this case there is essentially an omission that did not violate the law.

Commission Downey agreed that if Ms. Corbett's treasurer had gone ahead and written the check, then the clean hands would not apply. However, in that case, even though Ms. Corbett may not have been aware that writing that check would be a violation of the law, she would still be held accountable for the treasurer's error.

Commissioner Huguenin replied that the point is that so far there has been no violation.

Commissioner Downey explained that the candidate has to bear the consequences. There is a technical statute applicable of which the Commission appears to be ignoring. The Commission is certainly ignoring its own regulation if it allows the candidate to use the money.

Commissioner Blair said that this comes back to the question of an innocent error being made, meaning the candidate was not purposely attempting to get around the regulation, is the request of the Commission to allow the remedy the last opportunity to right the error. Ms. Corbett's request should be supported but the Commission needs to craft a regulation that is clearer regarding when the Commission will grant relief based on innocent error.

Chairman Randolph responded that a regulation might not be a good idea. Regarding Ms. Corbett's situation, there was no violation of law and the facts are not in dispute. One question to consider is whether an error is considered a filer's error or another person's. In the five letters that the Commission has looked at, were any of them just the filers error?

Mr. Rockas replied that the letters are not clear. It appears from all the letters that no agent or staff person was named as being the white hot center of error. While considering the significance of the five advice letters that have been focused on, also remember that on page 5 of the staff's analysis, in the second paragraph, seven advice letters that were issued by staff are mentioned that advised that the language contained in section 89519(b)(5), which is the pertinent subdivision at issue, has prohibited a candidate from using surplus campaign funds leftover from one state or local campaign to fund that same candidate's later campaign for another state of local office in California.

Chairman Randolph mentioned that because those letters are not present, the Commission does not know all of the facts of those letters. The Commission does not know specifically what all the facts and issues were or whether anyone was requesting relief from a mistake.

Mr. Rockas said that typically the advice letters deal with proactive situations as opposed to past conduct. Therefore, it would be safe to assume that the people were writing to ask advice about something they wanted to do in the future.

Chairman Randolph replied that the Commission does not know if those situations are analogous to this one.

Mr. Rockas said that those seven letters all deal with 89519(b)(5), whereas only one of the five letters cited by Mr. Pirayou deals with that statute, and that particular letter only mentions the statute.

Mr. Appelbaum said that regarding the 91006, the statute holds the candidate and committee responsible for the treasurer's actions. It is very difficult to separate those out and only hold some candidates and committees responsible.

Chairman Randolph pointed out that the Commission does not necessarily have to make that decision. It could be said that the candidate can throw themselves on the mercy of the Commission regardless of whether it was them or someone else who made the mistake. The Commission could do it either way. It would probably be easier on Enforcement if the Commission did not make that distinction.

Mr. Appelbaum replied that anytime there is an Enforcement case, if no line is drawn, all the candidates and committees can come forward and say the blame goes on the treasurer. It is understood that in this case, there was no violation, however anytime there is a violation the person could come here and appeal it based on this decision.

Chairman Randolph said that the Commission could specify that this situation does not apply under regulation 91006 and it does not have anything to do with those provisions of the Act.

Commissioner Downey explained that if the Commission writes an opinion letter which is crafted to give the relief sought, it is basically going to have to say, "Here are the facts and they are undisputed; cleans hands and reliance upon a treasurer. Where a candidate, in good faith, makes several requests of a treasurer and gets the same wrong answer every time, and the treasurer has in fact made a mistake, the Commission will then give the relief despite the language of the statute and the regulation." There are actual laws that apply to this situation. How does the Commission say that, despite the laws, if the situation is not fair, then the relief will be allowed?

Commissioner Huguenin responded that Commissioner Downey's comment on the statute of limitations is interesting. The one thing that is clear here is that there was an opportunity to avail oneself of an advantage which was not taken. This is not a circumstance where someone acted in contravention of the Act.

Commissioner Downey asked Commissioner Huguenin to paint a picture of the door that the Commission would like to go through. It will have to have some parameters.

Chairman Randolph asked if the door looks like a candidate tried to use the surplus funds before they became surplus and were prevented from doing so.

Commissioner Blair said that another issue to consider heavily is that the candidate knew there was a time frame, knew the transfer had to be done, and repeatedly said to the staff person to make sure it was done. The staff person did not do it. If the candidate had actively been involved in making the correct decision and encouraging it to happen, there would be less reason to support this case.

Chairman Randolph said that in the previous advice letters the Commission said that given the plain language of the statute, certain situations were not fair, therefore, the Commission did something different. Not that those decisions are binding, but if it does not do violence to the Act to let the candidate take affirmative steps to go back, then is that such a bad thing.

Commissioner Downey said that the violence to the Act is sanctioning a result which is directly and clearly in conflict with the statute and the regulation. If the Commission is looking at other purposes of the Act, aside from those we can draw from the existence of 89519, then maybe the Commission can get there. However, that is the one statute that cannot be avoided in this case. What about all the other candidates who get wrong information from their staff, can they come to the Commission and say that it was not their fault?

Chairman Randolph responded that, as a practical reality, it happens all the time and those people get fined. The Commission has to decide if it wants to issue an opinion. Then staff has to draft that opinion and then the Commission meets and decides to approve or modify that opinion. It cannot be put off to another meeting. Staff needs a direction to either not do an opinion, or to do an opinion that would grant the request.

Commissioner Downey added that staff can also be directed to do an opinion that denies the request.

Chairman Randolph said that it would be better to not do the opinion than to do the opinion denying the request because it does not seem to be a broad enough issue that simply saying no needs to be clarified for further precedential value. The question that really needs to be answered is if the Commission wants staff to draft an opinion, what the parameters of that opinion are going to be. Clearly it has to involve someone with clean hands and some sort of hardship. The issue of this furthering the purposes of that Act is difficult. Although this situation would not conflict with the purposes of the Act, it does not seem to further it either.

Commissioner Downey said that the argument here was that the Act encourages educating the voting public and that is not a basis for furthering the purposes of the Act.

Chairman Randolph agreed with Commissioner Downey.

Commissioner Huguenin said that one of the interesting points of this section is that it allows the money to be spent, even as surplus funds on any other candidacy except for state office, which seems like an interesting policy choice. It is interesting to conceive of what the Act's purpose is

in that policy choice. The Commissioner moved that staff be asked to draft the opinion that has been discussed, namely one that would permit the transfer that has been requested. That is with the idea that the Commission would look at the draft next time and revisit these issues once more and either adopt it or not. The Commission does not seem prepared to say no today.

Chairman Randolph said that there is a motion and asked for a second.

Commissioner Blair asked for clarification of the motion.

Commissioner Huguenin replied that the motion is to have staff draft an opinion that incorporates the comments of the Commissioners.

Commissioner Downey clarified that the Commission wants an opinion granting the relief requested.

Commissioner Blair seconded that motion. Commissioners Blair, Huguenin, and Chairman Randolph supported the motion and Commissioner Downey did not support the motion, which carried with a 3-1 vote.

Mr. Rockas confirmed that the proposed opinion needs to include that cleans hands are imperative and asked what should be said about the blame for the mistake.

Chairman Randolph said that some sort of significant hardship has to result to the filer.

Mr. Rockas asked if the Commission would like to specify a dollar amount.

Chairman Randolph declined to specify a dollar amount.

Mr. Rockas asked if the error has to be by the candidate or some other party associated with the candidate.

Chairman Randolph said the fact that it was someone other than the candidate is significant.

Mr. Rockas asked if there is significance as to the expertise of the person who committed the error.

Chairman Randolph said that there does not seem to be relevance to the expertise of the person making the error.

Commissioner Blair added that one thing that was very convincing was that the treasurer admitted the error. There was no question of interpretation.

Commission Downey said that in that case the fate of the candidate depends on the integrity of the misguided treasurer.

Mr. Rockas asked if an affidavit, as opposed to live testimony would be sufficient in assessing the verity of the person committing the error.

Chairman Randolph agreed that an affidavit would be enough.

Item #11. Regulations – Quarterly Work Plan Revisions.

John Wallace, Assistant General Counsel, presented the March 2006 update to the Commission. Due to losing two Senior Commission Counsel recently, therefore, the calendar was changed substantially. The schedule was reorganized to accommodate staff taking over existing projects and getting up to speed on them. The only new item was the opinion that was just considered.

Item #9. Adoption of Proposed Regulatory Amendments to Regulations 18225.4 and 18428 and Adoption of Regulation 18215.1 — Aggregation of Contributions and Independent Expenditures.

(Discussion continued from earlier)

Mr. Lenkeit presented the revised language of the proposed regulations.

Chairman Randolph reviewed the language changes.

Commissioner Randolph asked if there were any technical amendments that needed to be made.

Mr. Lenkeit replied that there were none.

Chairman Randolph said that it looks like all the changes were made pursuant to the comments.

Ms. Eddy noted that the language on page 2, line 4, is not consistent with Mr. Nielsen's changes.

Mr. Lenkeit responded that the language was left in because some of the language was in the current regulation and was not intended to be changed. Leaving the language the way it is makes it clearer.

Chairman Randolph agreed.

Commissioner Downey made a motion to approve adoption of regulation 18215 and to adopt the amendments to regulations 18225.4 and 18428 as changed.

Commissioner Blair seconded the motion, which passed with a 4-0 vote.

Item #12. Legislative Report

Whitney Barazoto, Legislative Coordinator, said that there were a total of twenty-six new bills introduced before February 24, 2006. Five of those bills are Commission sponsored bills. Authors for all of the Commission's legislative proposals were found, and those proposals are within those five bills or they will be added to them in the near future. There is one correction on page 6 of the legislative report. The position listed under SB 1760 should read "sponsor."

Chris Espinosa, Executive Fellow, presented AB 1391 which deals with campaign and economic interest disclosures and use of campaign funds. AB 1391 by Assemblymember Leno is a Commission sponsored bill that was introduced last year. The bill was amended by the author and now includes two new sections. The original sections of the bill are now numbered sections 2 and 3. Section 2 would require that any general purpose committee determine for registration and reporting requirements, whether it is a state, county, or city general purpose committee, based on where the committee makes a majority of its contributions and independent expenditures. In defining the different types of general purpose committees, the bill accomplished the purpose of the Commission in originally sponsoring this bill. Section 3 of this bill would make a non substantive change to the definition of sponsored committees. This non substantive amendment to section 82048.7 can be deleted from the bill, as it was addressed during last year's legislative session in AB 1755. Section 1 and 4 are the recent amendments of this bill by the author. Section 1 would increase the number of reporting categories on a statement of economic interests to require the disclosure of income over $100,000 in newly specified increments. Section 4 of this bill would prohibit the use of campaign funds to lease real property or purchase, lease, or refurbish equipment when legal title to the property or equipment is held by an entity in which a candidate or other individual with authority to approve the campaign expenditure holds a ten percent or greater interest. The Commission is unlikely to incur more than nominal cost if this bill were to become law. Staff recommends that the Commission continue to sponsor section 2 of this bill and support sections 1 and 4.

Commissioner Blair asked what section the proposed categories were in.

Ms. Barazoto replied that the proposed categories are included in one of the new sections.

Chairman Randolph confirmed that it is section 1.

Mr. Espinosa said that it is in section 1.

Commissioner Blair asked what staff's suggestion was for section 1.

Mr. Espinosa replied that staff is suggesting support.

Commissioner Blair said that the reason for these categories is to know whether the candidate or appointee is wealthy or not.

Commissioner Huguenin added that the category also reveals to what extent the candidate or appointee is wealthy.

Commissioner Blair explained that the category shows whether the candidate or appointee is over or under $100,000. Or rather, the filer is between $10,000 and $100,000 or is rich.

Mr. Espinosa responded that the proposed increase in the Statement of Economic Interests income disclosure furthers one of the fundamental purposes of the Act, that assets and income of public officials should be disclosed.

Commissioner Blair replied that "public official" groups in everyone who is volunteering to serve the community and there may be appointees who would be very uncomfortable with their net worth being so clearly public. The addition of another category or two seems appropriate but having so many of them is not.

Chairman Randolph asked staff if the author is amenable to compressing some of the categories. Possibly $100,000 to $500,000 and $500,000 to $1,000,000.

Mark Krausse, Executive Director, replied that there has not been any conversation on that possibility but staff would be willing to do so. The background on this is that at the end of the last legislative session, a number of bills were amended to expand these reporting categories and there is another bill pending, AB 2432, and also SB 1265. The idea has to do with the news stories about the Governor having received income into a business entity of his that, because the threshold there was very low, did not give the public real disclosure about the amount of money. It appears Assemblymember Leno is attempting to get more transparency about how much the individual may actually receive from that entity, which is receiving income from a third party. However, staff would certainly be willing to work with the author to collapse some of those categories.

Chairman Randolph agreed that going back to the author would be a good idea because there does not seem to be a reason to have so much break down between $100,000 and $1,000,000.

Mr. Krausse explained that there is an old case, Carmel by the Sea, where it was required that the actual dollar amount held be reported. That was deemed a violation of privacy rights, therefore, the categories were created to avoid the pin pointing of the exact number. Perhaps too many categories is too specific. Mr. Krausse asked Commissioner Blair what categories would be appropriate.

Commissioner Blair answered that the "over $100,000" category is too broad. The upper limit is the one that raises concern. The category should be $100,000 to $250,000 and stop there. If the public wants to know if the official earns a lot of money, $250,000 is explicit enough to answer that question. It is the appointees who do not deserve so much public scrutiny.

Chairman Randolph said that having a higher category or two would be appropriate.

Commissioner Blair asked how high the category would be.

Chairman Randolph suggested a category of $1,000,000 to $2,000,000, or over $2,000,000.

Commissioner Blair asked what the higher category would accomplish.

Chairman Randolph said that the higher category would reveal the magnitude. The reporting is not just income, but also includes business deals and partnerships. There is a big different between having a $250,000 interest in a partnership versus having a $2,000,000 interest in that partnership. Having at least some additional broader categories would be helpful.

Mr. Espinosa added that this also applies to income, loans, and business positions.

Commissioner Blair said that if investments are included then it would make sense to have higher numbers. However, the exception and the one piece of information that most people consider highly private is yearly income. Maybe there should be a different category for income.

Chairman Randolph asked if any other Commissioners had comments.

Commissioner Huguenin concurred with Commissioner Blair's opinion that the schedule that is in the bill currently is too particular. There is great sentiment among those in the legislature to have transparency and make a lot of categories. There may be a way to carve out annual income and have it separate from investments.

Mr. Krausse said that the income categories cover both earned income and income from investments. If $250,000 were the highest reporting number, there would be no need to split the two types of income.

Chairman Randolph asked how that threshold would eliminate the need to split the amounts.

Ms. Barazoto replied that section 87207 refers to income from any source. It does not designate whether it is income coming from investment or income coming from a separate business. It is not clear how the income categories could be separated by source.

Chairman Randolph said that separating the two income types would be too confusing. Some of the middle categories should be eliminated and have $100,000 to $1,000,000, $1,000,000 to $2,000,000, and then over $2,000,000.

Commissioner Downey asked why those categories are better than have a $250,000 top category.

Chairman Randolph replied that there is enough of a difference between $250,000 and $1,000,000 or $2,000,000. Another option is to remove the $1,000,000 and just have $250,000 to $2,000,000. There is a large qualitative difference between $250,000 and $2,000,000.

Commissioner Blair wondered if a candidate would want the voters to know they were working middle class or very wealthy, or extremely wealthy. Volunteers have to live under this requirement as well. Unless elected officials and volunteers are going to report differently, then it is not necessary.

Chairman Randolph agreed with Commissioner Blair's point and confirmed that the appropriate categories would be $100,000 to $250,000 and over $250,000.

Commissioner Huguenin said that Commissioner Blair's suggestion seems the best way to report income.

Commissioner Downey noted that the current and the proposed language start at $500 and wondered what the significance of $500 was.

Chairman Randolph replied that $500 is the disqualification amount.

Commissioner Downey suggested $500 to $10,000, $10,000 to $100,000, $100,000 to $250,000, and $250,000 and over.

Chairman Randolph said that those categories were more meaningful. The options are for the Commission not to take a position at this meeting and speak with the author or agree on a "support if amended" position.

Mr. Krausse said that the author is not likely to want to amend the categories unless there is definitive support from the Commission.

Commissioner Blair stated that the Commission should take a stand on this issue.

Chairman Randolph said that the Commission should take a "support if amended" position.

Mr. Krausse asked if the Commission would like to discuss the last provision about the leasing from committees while having ownership interest.

Chairman Randolph had no concerns with that issue.

Commissioner Blair asked for the proposed categories to be repeated.

Chairman Randolph stated that the suggested categories would be $500 to $10,000, $10,000 to $100,000, $100,000 to $250,000, $250,000 and over.

Commissioner Blair made a motion to support if amended to the four categories proposed.

Commissioner Downey seconded the motion, which passed with a 4-0 vote.

Chairman Randolph asked for the next bill.

Ms. Barazoto presented AB 2776, which deals with radio ballot advertisement disclosure, by Assemblymember Plescia. This bill would allow radio advertisements for ballot measures to disclose contributor information by toll free phone number, instead of by speaking the information within the advertisement. Currently, radio ballot ads must include disclosure of the top two contributors, as well as the committee name, if a committee contributed to that ad. The

committee name must identify the economic or other interests of its contributors of $50,000 or more and if those contributors share a common employer, the employer must also be identified. This information must be spoken within the ad so as to be clearly audible and understood by the intended public. There is an exception for advertisements that are fifteen seconds or less in that the spoken disclosure must include only the committee name and its highest contributor. Under current law, the shortest ballot measure ad disclosure may include just one individual or committee name. However, longer ads could include the committee name and the top two contributors, which may be quite long depending on the required incorporation of information. The disclosure may also include statements indicating committees for or against certain propositions, which would also make the ad longer. The California Broadcasters Association (CBA) is sponsoring AB 2776 and claims that the disclosure in audio advertisement for ballot propositions could consume an entire thirty second spot. CBA adds that this puts radio at a competitive disadvantage to other advertising channels, such as print media and direct mail, and that political consultants are moving their advertising buys away from radio to media that can disclose the information in a less intrusive manner. CBA has indicated that the current language is only a spot bill, and that it intends to amend it to something more workable.

Ms. Barazoto continued that based on the current language staff have a number of concerns. First, the bill would shift the burden of disclosure from the individual or committee to the public so that the public is required to write down the toll free number at the end of the ad and call to obtain the disclosure. Secondly, the bill would be difficult to enforce, as the toll free number recordings could be changed momentarily and Enforcement staff would not be able to ascertain exactly which recording was heard. Third, disclosure would be reduced as a result, which hinders the purpose of the Act in violation of section 81202. Lastly, the language of the bill is very ambiguous as to who is responsible to maintain the toll free number, whether there would be a separate number for each ballot measure, and how the new provision would interact with the remaining provisions in the Act. As a result of this bill's ambiguity, it is difficult to asses what the fiscal impact would be on staff's workload. As written, it appears that staff time would be spent promulgating regulations and revising manuals and instructions, however the larger cost would be incurred through an increase in complaints being filed and investigated. The Commission may also need to create a system to monitor or audit the telephone numbers and recordings. Therefore, the resulting costs could be quite significant.

Commissioner Downey made a motion to approve staff's recommendation to oppose AB 2776.

Commissioner Blair seconded the motion.

Ms. Barazoto added that staff has offered the option of taking the fifteen second exception and changing it to thirty seconds to allow more time for the disclosure to be made. Staff is willing to work with the author on this option.

Commissioners Downey, Huguenin, and Chairman Randolph supported the motion, which carried with a 4-0 vote.

Item #22. Executive Director's Report

Chairman Randolph noted that at the last meeting Commissioner Remy had requested some specific numbers on how the Commission would spend the budget money that may be available in July if the Ortiz bill passes. However, since Commissioner Remy was unable to attend this meeting, it would be better to put that discussion off until the next month.

Chairman Randolph asked if there was anything else to add.

There was nothing.

Item #25. Litigation Report.

Luisa Menchaca reported that there was nothing to add to the written report.

The meeting adjourned to closed session at 12:05 p.m.

No reportable action in closed session.

The meeting adjourned at 12:20 p.m.

Dated: March 14, 2006

Respectfully submitted,

_____
Kelly Nelson
Commission Assistant

Approved by:

_____
Liane Randolph
Chairman